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personal property from a husband to his wife, on the ground of fraud, may either sue in equity to avoid the conveyance and subject the property, or they may ignore the conveyance and, after obtaining judgment, levy an execution on the property and sell it. In the latter case, if the wife claim the property levied on for her husband's debts, and if an indemnifying bond be given for her protection, she may assert her claim by a suit on the indemnifying bond, but in neither case is either husband or wife a competent witness. A wife may testify where the cause is her own and her husband has no interest in the result of the suit, though a nominal party to it, but not where the gist of the transaction is the fraudulent transfer of property from one to the other.

3. EVIDENCE—*Witness—Competency.* If a witness is competent to give evidence at all in a cause, he may be examined upon any matter in the record, and is not competent for one purpose only.

4. SECTION 2877 OF CODE—*Doing business as "agent," "factor," etc.—Knowledge of creditor as to who principal is.* The provisions of sec. 2877 of the Code relating to doing business as a trader with the addition of the words "factor," "agent," etc., without disclosing the name of the principal, apply without regard to knowledge by the creditor of the principal, if principal there be. Knowledge or want of knowledge plays no part in the application of the statute. It is an immaterial matter.

5. PRINCIPAL AND AGENT—*Proof of agency—Acts and declarations of agent—Presence of principal.* Declarations or acts of an agent cannot be accepted to prove his agency. That fact must be proved by other evidence and must be first established before his declarations or acts are admissible as evidence. But declarations and acts tending to establish the agency, said or done by the agent in the presence of the principal, and not repudiated by him, are admissible in evidence as tending to prove the agency.

6. INSTRUCTIONS—*When not too late.* An instruction does not come too late because offered during the closing argument before the jury.

7. HUSBAND AND WIFE—*Presumption as to ownership of property in possession of wife.* In a contest between a wife and the creditors of her husband, the law presumes that the husband is the owner of all property acquired, or of which the wife may be in possession, during the coverture.

BRADSHAW V. BRATTON.—Decided at Richmond, January 12, 1899.

Keith, P. Absent, Cardwell and Riely, JJ:

1. VALUABLE CONSIDERATION—*Refraining from suit—Judgments.* Refraining from instituting proceedings to subject land to the payment of a judgment which is a lien thereon, on a written promise by the owner of the land to pay the judgment, constitutes a valuable consideration for the promise to pay the judgment, although the land owner was not previously liable for the judgment.

2. JUDGMENTS—*Fraud in procurement.* A charge that a confession of judgment was obtained by fraudulently representing that the lien on the defendant's land for which the judgment was confessed, was still in force, when in fact it was at the time barred by the statute of limitations, of which the defendant was ignorant, is not sustained where it appears that, while the lien was in force, the defendant, for

a valuable consideration, gave to the plaintiff a promise in writing to pay the *lien*. The defendant only did voluntarily what he might have been compelled to do, and has suffered no injury.

LITTELL V. THE JULIUS LANSBURG CO.—Decided at Richmond, January 12, 1899.—*Harrison, J.*:

1. ATTACHMENTS—*Petitions—Rights of third parties—Case at bar.* A plaintiff in attachment, who has a deed of trust on the property attached, cannot unite with the trustees in the deed and come into the attachment suit by petition and ask to have the attached property delivered to the trustees. Sec. 2984 of the Code was intended for the protection of the rights of third parties and not of the plaintiff in the attachment. In the case at bar the plaintiff, though united with the trustees, was the real petitioner, and the attachment having been quashed because issued without sufficient cause and upon false suggestion, the property was rightly restored to the defendant.

KELLER V. STONE, REGISTRAR, AND WALKER V. STONE, REGISTRAR.—Decided at Richmond, January 26, 1899.—*Cardwell, J.*:

1. MANDAMUS—*Registration books—Copies.* Mandamus does not lie to compel the registrar of an election precinct to make copies of the registration books in his possession or to permit such copies to be made.

2. MANDAMUS—*Poll-books—Copies—Jurisdiction of Court of Appeals.* Mandamus does lie to compel a clerk who is the custodian of the poll-books after an election to permit a party interested to inspect them and to take therefrom at and within a reasonable time, in the presence of the clerk, memoranda and notes such as are proper to be made, as declared in *Gleaves v. Terry*, 93 Va. 491, and this court has jurisdiction to award such *mandamus*.

HARRIS V. JONES AND OTHERS, COMMISSIONERS.—Decided at Richmond, January 26, 1899.—*Harrison, J.* Absent, *Cardwell* and *Buchanan, JJ.*:

1. CHANCERY PRACTICE—*Decree for sale of land—Account of liens.* It is error to decree a sale of land to satisfy encumbrances thereon until an account has been taken of the encumbrances and their relative priorities. But if a decree of sale has been entered and thereafter a decree for an account of liens, the latter decree operates to suspend the sale until the account has been taken and confirmed.

2. CHANCERY PRACTICE—*Vacation decrees—Confirming report of liens—Hearing on merits.* A decree confirming a report of liens disposes of the cause on its merits and cannot be entered in vacation except by consent of parties, as provided in section 3427 of the Code.

SOUTHERN RAILWAY COMPANY V. FRANKLIN AND PITTSYLVANIA RAILROAD COMPANY.—Decided at Richmond, February 2, 1899.—*Riely, J.*:

1. CONTRACTS—*Implied covenants—Case in judgment—Railroads—Lease.* Although courts are careful in inferring covenants and promises not contained in written contracts, yet what is necessarily implied is as much a part of the instru-